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HARRY V. SATTERWHITE*

**ADMITTED IN ALABAMA, FLORIDA AND MISSISSIPPI*

August 9, 2019

Lawrence L. Battiste, IV
Chief of Police, City of Mobile
2460 Government Boulevard
Mobile, Alabama 36606

**Re: Towing Services in the City of Mobile
Our File No. 645.0000**

Dear Chief Battiste:

I represent the South Alabama Towing and Recovery Association and several local towing companies. I am writing to you in the hope that we can create a constructive dialog between the City of Mobile and the local towing companies that could eventually lead to a resolution of the current disputes.

Regardless of what the City may have done wrong, or what these towing companies may have done wrong, I am offering to work with your office to reach a compromised settlement.

If this offer is accepted, I will work with the tow truck companies and advise them to listen to the concerns of the City about any perceived problems associated with tow truck services. I will also help them reach compromises with the City where that is possible. At the same time, we will ask the City to consider the negative impacts of the current ordinance on the tow truck operators, as well as the impact of any proposed changes to the ordinance. It is my belief that the City is not fully aware of all of the mandatory costs of running a tow truck operation, how the City's current ordinance is adversely affecting these small businesses, and how the proposed new ordinance will make it even worse. If both parties will enter into negotiations in good faith, I believe that a compromise can be achieved.

However, if the Police Department continues to defame, intimidate, raid, investigate and suspend my clients from the tow truck rotational list, they will have no choice but to resort to legal action. These local tow truck operators are ready to defend themselves if necessary. Furthermore, they have sufficient grounds to file an action for damages, if the City continues to violate their Constitutionally protected civil rights. Therefore, this letter appears to be the last chance to resolve these issues without wasting the valuable time and resources of everyone involved with unnecessary litigation.

Tow truck companies are small businesses just like any other in the City of Mobile. They run a perfectly legal business which is helpful to the City and its Police Department. They have not been cited for violations of the City Code in recent memory. They support their families, they pay their bills, they pay their employees, and they pay their taxes. They always cooperate with the police officers and firefighters at the scene of accidents. They enjoy the many friendships that develop with the first responders at accident scenes. Therefore, they do not deserve the abuse they have received from the City of Mobile and the Mobile Police Department.

On July 11, 2019, Mobile Police detectives obtained search warrants to conduct raids on five local tow truck businesses for suspicion of "insurance fraud." The subject of the investigation was whether the tow truck companies charged their customers (and insurance companies), who chose to use their towing services (known as "consensual services"), rates in excess of the amounts that are permitted by MOBILE CITY CODE SEC. 63-13 - RATES.

However, the detectives knew that a Federal Statute clearly prohibited the City from setting the rates for consensual tow truck services.¹ Since that portion of the City Code that purports to set the rates for towing services is invalid, the tow truck operators could not have violated the ordinance, and they could not have committed "insurance fraud." The investigators could not possibly have had a "reasonable suspicion" that a crime had been committed. The entire investigation was unwarranted, unconstitutional, and conducted in violation of a Federal Statute. Therefore, the detectives obtained the search warrants with "deliberate indifference" to our clients' Constitutional rights. This is especially outrageous considering the City of Mobile Impound Lot has charged the same allegedly "fraudulent" rates for more than a decade.

The investigation apparently first came to the attention of the Police Department when representatives from the towing companies began attending City Council meetings and asking officials to increase the legally mandated \$125 towing fee to \$150, the same rate allowed by the Alabama Law Enforcement Agency and the Mobile County Sheriff's Office. This was not an unreasonable request, and these tow truck companies have a First Amendment right to comment before the Council on issues affecting their businesses. Moreover, as stated above, the City had no legitimate authority to regulate the rates that tow trucks charge under the Federal Law, 49 U.S.C. § 14501(c)(1).

However, a rival tow truck owner apparently became a confidential informant for the police during the investigation. He allegedly has provided police investigators with so-called evidence about his competitors. That is when you chose to defame the local tow truck companies by stating: "In many ways they helped open this can of worms by wanting to get more through the ordinance. But as we looked at what they were doing, they were already excessively charging the citizens of

¹ 49 U.S.C. § 14501(c)(1). Federal legislation preempts provisions by "a State [or] political subdivision of a State . . . related to a price, route, or service of any motor carrier . . . with respect to the transportation of property." *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 428 (2002) (quoting 49 U.S.C. § 14501(c)(1)). "Tow trucks are 'motor carrier[s] of property' within the scope of § 14501(c)." *Id* at 430.

this community and the insurance companies." You also added that "Some of these wrecker companies are charging in excess of 25 up to 100 percent more than what the City allows."

On July 12, 2019, police officers and investigators wearing flak-jackets and wielding weapons, conducted raids on five local family businesses that perform tow truck services. Officers kicked in a door at one company. Some of the businesses were run out of the owner's residences. The police raided the homes as well. The detectives knew their search warrants were unlawfully obtained, and therefore the raids were nothing more than an intimidation tactic. They willfully and intentionally violated our clients' due process rights and equal protection rights protected by the 14th Amendment to the U.S. Constitution. The investigation and raids were also a direct result and in retaliation for our clients exercising their First Amendment rights to object to the unlawful regulation of their businesses.

In addition, detectives could have just requested that the tow truck operators voluntarily produce the documentation that they wanted to review, instead of conducting surprise raids on the businesses and homes of family businesses by using armed law enforcement officers. The MOBILE CITY CODE states:

"In the event that suspension or revocation of permits or licenses is contemplated against any wrecker company, the Police Department shall have the authority to require the wrecker company to make available to the chief of police or his designated representative any and all books and records of the wrecker company pursuant to any investigation of violations of this chapter by the Police Department."

MOBILE CITY CODE SEC. 63-61.

Even though there is no legal basis for the police investigation, nevertheless, the tow truck companies would have willingly and peacefully provided the City and/or the Police Department with any and all records that they requested, as mandated by the ordinance. Or, the tow truck operators would have allowed a detective to look through their books. It is hard to see what was legitimately accomplished by these ostentatious police raids, other than providing a show for television, social media and news photographers. Therefore, the tow truck operators have a legitimate argument that the City intentionally sought to embarrass them and harm their businesses.

Moreover, in the aftermath of the raids, you and other agents of the Police Department, made several defamatory public statements about our clients. These statements were published by media outlets, and circulated on social media, just as you and your agents intended. This damaged our clients reputation in the community, as well as their ability to earn a living. I remind you that

citizens are innocent until proven guilty under the U.S. Constitution, and these individuals have not been found guilty of anything. Yet, you and your department have announced their guilt to everyone in the City of Mobile, as well as the farthest reaches of the internet, with a reckless disregard for the harm that would bring to the innocent business owners. If this case is presented to a jury of their peers, they will not understand your actions.

Now, it appears that your allegations were made a little too soon, since you have admitted that the City Impound Yard is guilty of charging citizens for similar services in similar amounts as the tow truck companies. So, just to restate the undisputed facts as we know them, the Mobile Police Department is conducting an investigation of several small family-run businesses, that supposedly required armed law enforcement officers to conduct surprise raids of their offices and homes, to find evidence of certain illegal actions – which said illegal actions were also admittedly committed by City officials – all in violation of a Federal Statute.

All Mobilians want the City to foster a business-friendly environment. No one deserves the treatment our clients have received. Ironically, the City of Mobile's website promotes the City's administration by proclaiming that it "has developed an efficient, business-oriented organization that is employee-centered and customer-driven." In addition, you promote the Police Department on the same website, by stating that the "Mobile Police Department officers and employees are citizen-oriented, carrying out each interaction in a respectful and effective manner." However, based on the undisputed conduct of the City and the police officials in this case, it is hard to believe that the City is truly "business-oriented." It is also hard to see how the Police Department can claim to be "citizen-oriented" and "respectful" to business owners.

The City's raids were only the beginning of the police abuse. Now the City is trying to kill the business of these tow truck operators by suspending them from the City's rotation list. The City knows full well that these tow trucks have little to no business revenue without the rotation list. As of the date of this letter, nothing has been proven against any of these small businesses. They have not been charged with any crime, large or small. However, the current 30-day suspension has taken away 8.3% of their annual revenue. The City has also threatened a longer or permanent suspension, without providing the businesses notice or an opportunity to be heard. Each 30-day suspension will result in the City taking another 8.3% of their annual revenue. Because these suspensions represent an unconstitutional "taking" of a Constitutionally protected property right, the City will eventually be responsible to reimburse the lost revenue to the tow truck operators.

The U.S. Constitution protects citizens from overzealous government officials who would arbitrarily take away the right to conduct a lawful business. Pursuant to the 14th Amendment, no government may:

"[D]eprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

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U.S. CONSTITUTION, AMENDMENT XIV, SECTION 1.

If forced to protect their Constitutional rights, our clients will file a lawsuit in the United State District Court for the Southern District of Alabama, pursuant to the Federal Statute known as "Section 1983," which allows such lawsuits as follows:

*"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress
.... "*

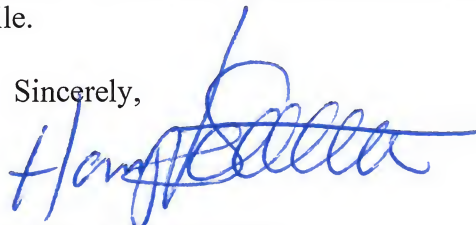
42 U.S.C. § 1983.

Under Section 1983, a plaintiff proves that (1) the wrongful conduct was committed by a person acting under color of state law, and (2) that as a result of this conduct, the plaintiff was deprived of rights, privileges or immunities secured by the Constitution or the laws of the United States. If successful, our clients will be entitled to an award of damages for lost income, emotional distress, reputational injury, punitive damages, and reasonable attorney's fees and expert witness fees.

If the City continues to suspend these tow truck companies from the customary rotation list, they will be forced to move forward with legal action necessary to challenge the suspensions. Therefore, on behalf of my clients, I hereby request that the unwarranted suspensions be lifted, and not renewed, while we attempt to resolve the dispute between the companies and the City. If there are other terms that the City would like to discuss at this time, I am happy to listen and advise my clients accordingly.

I sincerely hope that I can provide my clients and the City a valuable service by negotiating a compromise solution to this dispute. I have worked well with the City Attorney, Ricardo Woods, on civil cases in the past. I would like the opportunity to negotiate with his office, and to reach a resolution that will end the competing charges and animosity which are detracting from the otherwise excellent reputation enjoyed by the City of Mobile.

Sincerely,



Harry V. Satterwhite
For the Firm

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Chief of Police, City of Mobile
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cc: Mayor Sandy Stimpson
Councilman Fredrick D. Richardson, Jr.
Councilman Levon C. Manzie
Councilman C.J. Small
Councilman John C. Williams
Councilman Joel Daves
Councilwoman Bess Rich
Councilwoman Gina Gregory